NAME Phillip W. Dunn

PRISON NUMBER T-79951

CURRENT ADDRESS OR PLACE OF CONFINEMENT
CSATF + State Prison B2-155
P.O. Box 5248

CITY, STATE, ZIP CODE
Corcoran, CA 93212

FILED
MAR 14 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

2254 ✓ 1983
FILING FEE PAID
Yes No ✓
IFP MOTION FILED
Yes No ✓
COPIES SENT TO
Court ✓ ProSe

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(FULL NAME OF PETITIONER)

Phillip W. Dunn , PETITIONER

v.

Ken Clark, Warden ,

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

The Attorney General of the State of California, Additional Respondent.

Civil No '08 CV 0485 BTM JMA

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack:
Superior Court County of San Diego, El Cajon Branch

2. Date of judgment of conviction: 2-4-03

3. Trial court case number of the judgment of conviction being challenged:
06262508

4. Length of sentence:
13 years

5. Sentence start date and projected release date:
4-16-2002; 9-25-2003

6. Offense(s) for which you were convicted or pleaded guilty (all counts):
459/460/667.5(c)(21)

7. What was your plea? (CHECK ONE)
(a) Not guilty ☐ D. People v. west
(b) Guilty ☐
(c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
(a) Jury ☐
(b) Judge only ☐

9. Did you testify at the trial?
☐ Yes ☐ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?
☐ Yes ☒ No

11. If you appealed in the **California Court of Appeal**, answer the following:
(a) Result:
(b) Date of result (if known):
(c) Case number and citation (if known):
(d) Names of Judges participating in case (if known):
(e) Grounds raised on direct appeal:

12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:
(a) Result:
(b) Date of result (if known):
(c) Case number and citation (if known):
(d) Grounds raised:

13. If you filed a petition for certiorari in the **United States Supreme Court**, please answer the following with respect to that petition:
   (a) Result:
   (b) Date of result (if known):
   (c) Case number and citation (if known):
   (d) Grounds raised:

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Superior Court**?
☒ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:
   (a) **California Superior Court** Case Number (if known):
   (b) Nature of proceeding:
   Writ of Habeas Corpus; SCE 221319
   (c) Grounds raised:
   That a prior sentence was use twice when sentencing Cunningham, Blake, Booker, Apprendi
   (d) Did you receive an evidentiary hearing on your petition, application or motion?
   ☒ Yes ■ No
   (e) Result: Denied
   (f) Date of result (if known): 6-27-2007

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Court of Appeal**?
☒ Yes ☐ No

17. If your answer to #16 was "Yes," give the following information:

(a) **California Court of Appeal** Case Number (if known): F053906

(b) Nature of proceeding: Writ of Habeas Corpus

(c) Names of Judges participating in case (if known)
Vartabedian, A.P.J., Gomes, J.; Hill, J.

(d) Grounds raised:
Same As in Superior court

(e) Did you receive an evidentiary hearing on your petition, application or motion?
☒ Yes ☐ No

(f) Result: Denied

(g) Date of result (if known): 7-19-2007

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?
☒ Yes ☐ No

19. If your answer to #18 was "Yes," give the following information:

(a) **California Supreme Court** Case Number (if known):

(b) Nature of proceeding: S155218
Writ of Habeas Corpus

(c) Grounds raised:
Same As superior court

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☒ Yes ☐ No

(e) Result: Denied

(f) Date of result (if known): 1-16-2008

20. If you did ***not*** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the **California Supreme Court**, containing the grounds raised in this federal Petition, explain briefly why you did not:

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?
☒ Yes ☐ No (IF "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed?
(i) What was the prior case number?
(ii) Was the prior action (CHECK ONE):
Denied on the merits? ☐
Dismissed for procedural reasons? ☐
(iii) Date of decision:

(b) Were any of the issues in this current petition also raised in the prior federal petition?
☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?
☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present ***all*** other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUNDS FOR RELIEF

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE**: I WAS Sentenced Illegally. I was given A Strike Based on A Prior conviction And the same prior WAS used to enHance my Sentence By five years

Supporting FACTS: A Recent case That WAS Decided By the U.S. Supreme court HAS made my Sentence illegal. According to this Ruling the Sentencing court should not Be Allowed to use A felon conviction to one:) Increase A sentence. 2:) USE the same prior to Add An enhancement to the same sentence.. Also the prior That WAS used A kidnapping was An illegal sentence in the sence that I WAS convicted By A Jury then sentenced to the Aggravated upper term plus A one year enhancement. this case WAS used with my Current case to give me A Strike which was used to Double the middle term 4 years to eight. The same case WAS Again used As A Serious felony prior Adding 5 years more to the Sentence total. Then to cap it off I WAS only Allowed to earn 15% good time. So I Serve 85% of the sentence According to the New case law Handed Down By the supreme court this constitutes Dual usage The Higher state court rubber stamped my writs offering no Reasons for their denials. I did not plead guilty I pled people v. West.

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

(b) GROUND TWO:

Supporting FACTS:

N/A

Did you raise GROUND TWO in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

(c) **GROUND THREE:**

Supporting FACTS:

N/A

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

(d) **GROUND FOUR:**

Supporting FACTS:

N/A

Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?
☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court:

(b) Case Number:

(c) Date action filed:

(d) Nature of proceeding:

(e) Name(s) of judges (if known):

(f) Grounds raised:

(g) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing . . . . office of the Alternate public Defenders, county of san diego

(b) At arraignment and plea . . . . " " " " " " "
" " " " " " "

(c) At trial . . . . No trial

(d) At sentencing . . . . office of the Alternate public Defenders, County of San diego

(e) On appeal . . . . No appeal

(f) In any post-conviction proceeding . . N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding:

N/A

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
☐ Yes ☒ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
☐ Yes ☒ No

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to procced before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

☒ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☐ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court:

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

N/A

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

3-13-2008 (DATE)

Phil Dunn SIGNATURE OF PETITIONER

3147 2/4/03

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM

[Not to be used for multiple count convictions or for 1/3 consecutive sentences.]

CR-290.1

☒ SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
☐ MUNICIPAL BRANCH OR JUDICIAL DISTRICT EL CAJON

PEOPLE OF THE STATE OF CALIFORNIA vs.
DEFENDANT: PHILLIP WAYNE DUNN DOB: 02-04-60
AKA:
CII#: 06262508
BOOKING #: 02117345 ☐ NOT PRESENT

CASE NUMBER SCE221319

COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT ☐ AMENDED ABSTRACT

DATE OF HEARING	DEPT. NO.	JUDGE
02-03-03	11	HERBERT J. EXARHOS
CLERK: A. NARDUCCI	REPORTER: TAMMY NIELSEN, CSR #9143	PROBATION NO. OR PROBATION OFFICER: IMMEDIATE SENTENCING
COUNSEL FOR PEOPLE: MICHAEL PRZYTULSKI		COUNSEL FOR DEFENDANT: JACKIE CROWLE, ALTERNATE PUBLIC DEFENDER ☒ APPTD.

1. Defendant was convicted of the commission of the following felony:

CNT.	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	JURY	COURT	PLEA	TERM (L, M, U)	YRS.	MOS.
1	PC	459*/460/667.5(c)(21)	Residendial Burglary 1st Degree	2002	02-03-03			X	M.	8	0

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL	

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL	
PC 667(c)(21)	5							5	0

4. ☒ Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).
5. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):
   a. RESTITUTION FINE of: $500.00 per PC 1202.4(b) forthwith per PC 2085.5.
   b. RESTITUTION FINE of: $500.00 per PC 1202.45 suspended unless parole is revoked.
   c. RESTITUTION of: $TBD per PC 1202.4(f) to ☒ victim(s)* ☐ Restitution Fund
   (*List victim name(s) if known and amount breakdown in item 7, below.)
   (1) ☒ Amount to be determined. (2) ☐ Interest rate of: __% (not to exceed 10% per PC 1202.4(f)(3)(F)).
   d. ☐ LAB FEE of: $____ for counts: _____ per H&SC 11372.5(a).
   e. ☐ DRUG PROGRAM FEE of $150 per H&SC 11372.7(a). f. ☐ FINE of $___ per PC 1202.5.
6. TESTING: ☐ AIDS ☐ DNA pursuant to ☐ PC 1202.1 ☐ PC 290.2 ☒ other *(specify)*: PC 296
7. Other orders *(specify)*: PROBATION TO SUBMIT POST-SENTENCE REPORT DIRECTLY TO THE D. O. C. PER PC 1203c RE: CREDITS AND RESTITUTION. PC 667(a)(1) shall run consecutively to Count 1.

8. TOTAL TIME IMPOSED: 13 | 0

9. ☐ This sentence is to run concurrent with *(specify)*:

10. Execution of sentence imposed
   a. ☒ at initial sentencing hearing. d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
   b. ☐ at resentencing per decision on appeal. e. ☐ other *(specify)*:
   c. ☐ after revocation of probation.

M.G. 2-4-03

11.

DATE SENTENCE PRONOUNCED	CREDIT FOR TIME SPENT IN CUSTODY	TOTAL DAYS:	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS		SERVED TIME IN STATE INSTITUTION
02-03-04		TBD INCLUDING:	15		☐ 4019 ☐ 2933.1	☐ DMH ☐ CDC ☐ CRC

12. The defendant is remanded to the custody of the sheriff ☐ forthwith ☒ after 48 hours excluding Saturdays, Sundays, and holidays.
To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
☐ other *(specify)*:

CLERK OF THE COURT: I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE: I. STURGEON | DATE: 02-04-03

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

FILED
Clerk of the Superior Court

JUN - 7 2007

By: A. ESPINOSA-BARRON, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, EAST COUNTY DIVISION

IN THE MATTER OF THE APPLICATION OF: PHILLIP WAYNE DUNN, PETITIONER.	EHC 577 SCE 221319 ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

THIS COURT HAVING READ THE PETITION FOR WRIT OF HABEAS CORPUS AND THE FILE IN THE ABOVE CAPTIONED MATTER FINDS AS FOLLOWS:

On February 3, 2003, Petitioner entered a guilty plea to residential burglary in violation of Penal Code §§ 459/460. Petitioner admitted that another person was present in the residence during the offense within the meaning of Penal Code § 667.5(c)(21). Petitioner also admitted that he had suffered a serious felony prior and a felony strike prior. Petitioner was immediately sentenced to the stipulated term of 13 years in state prison.

On April 16, 2007, Petitioner filed the present petition for a writ of habeas corpus. Petitioner contends that the trial court imposed an illegal enhancement. Petitioner claims that there is a current Supreme Court decision which states that a trial court cannot use a prior conviction to raise the time and enhance the sentence. However, Petitioner has not provided the citation for the case he relies upon.

A petitioner in habeas corpus bears the burden of proving the facts upon which he or she bases his or her claim for relief. (*In re Riddle* (1962) 57 Cal.2d 848, 852.) Every petitioner, even one filing in pro per, must set forth a prima facie statement of facts which would entitle him to habeas corpus relief under existing law. (*In re Bower* (1985) 38 Cal.3d 865, 872; *In re Hochberg* (1970) 2 Cal.3d 870, 875 fn. 4.)

"A habeas corpus proceeding begins with the filing of a verified petition for a writ of habeas corpus. The petition 'must allege unlawful restraint, name the person by whom the petitioner is so restrained, and specify the facts on which [the petitioner] bases his [or her] claim that the restraint is unlawful.' (*In re Lawler* (1979) 23 Cal.3d 190, 194; see Pen. Code, § 1474.) When presented with a petition for a writ of habeas corpus, a court must first determine whether the petition states a prima facie case for relief--that is, whether it states facts that, if true, entitle the petitioner to relief--and also whether the stated claims are for any reason procedurally barred. (*In re Clark* (1993) 5 Cal.4th 750, 769, fn. 9.)" *People v. Romero* (1994) 8 Cal.4th 728, 737.

In the present petition, Petitioner is claiming that the same prior conviction could not be used to double his sentence and to impose the five-year enhancement. However, the courts have found that the prior conviction can be used for this dual purpose. The court in *People v. Ramirez* (1995) 33 Cal.App.4th 559, held that the same conviction may be used both to impose a prior serious felony enhancement under Penal Code § 667(a) and as the basis for sentencing under the Three Strikes Law. Thus, Petitioner has not shown facts establishing a prima facie basis for relief.

If Petitioner was attempting to rely on the recent decision in *Cunningham v. California* (2007) 549 U.S. __, 127 S.Ct. 856, 166 L.Ed.2d 856 (*Cunningham*), the holding in that case is not applicable to Petitioner's sentence.

The *Cunningham* court, relying on its precedents in *Apprendi v. New Jersey* (2000) 530 U.S. 466 (*Apprendi*), *Blakely v. Washington* (2004) 542 U.S. 296 (*Blakely*), and *United States v. Booker* (2005) 543 U.S. 220 (*Booker*), held that imposition of the upper term under California's Determinate Sentencing Law (DSL) violates the right to a jury trial and proof beyond a reasonable doubt by allowing judges to conduct fact-finding on aggravating factors used to justify the upper term sentence.

Petitioner's argument that his sentence violates *Cunningham* fails for the following reasons. First, Petitioner was sentenced and the judgment was final, as his time to appeal had expired, prior to *Blakely* and *Cunningham* being decided. Accordingly, those cases do not apply to him. (See *Booker, supra,* 543 U.S. at 268 [holding applied retroactively only to cases not yet final]; *Schriro v. Summerlin* (2004) 542 U.S. 348, 124 S.Ct. 2519, 159 L.Ed.2d 442 [*Ring v. Arizona* (2002) 536 U.S. 584, and a fortiori *Apprendi,* do not apply retroactively on habeas review]; *People v. Monge* (1997) 16 Cal.4th 826, 841 [new rules of constitutional law do not generally apply retroactively to convictions already final]; *In re Consiglio* (2005) 128 Cal.App.4th 511, 514-515 [*Apprendi* and *Blakely* not retroactive to cases already final on direct review]; *People v. Amons* (2005) 125 Cal.App.4th 855, 865-867 [*Blakely* not retroactive because it does not establish a watershed rule of criminal procedure].)

In addition, even if *Cunningham* applied retroactively to Petitioner's case, he still would not be entitled to relief, as he did not receive an upper-term sentence. Petitioner was sentenced to the middle term for the substantive offense and the only term available for each enhancement. Thus, *Cunningham* is not implicated.

Finally, Petitioner's increased sentence was due to his prior convictions. The Court in *Apprendi* specifically stated that the rule announced in that case did not apply to sentences enhanced by prior convictions. (See *Apprendi, supra,* 530 U.S. at 487-490.) Nothing in *Blakely* or *Cunningham* changes *Apprendi* in this regard.

Based on the foregoing, Petitioner has failed to state a prima facie case for relief. In addition, the *Cunningham* decision is not applicable to the Petitioner's sentence. Accordingly, the petition for a writ of habeas corpus is DENIED.

The clerk's office is hereby directed to serve a copy of this Order on: (1) the Petitioner; and (2) the Office of the San Diego County District Attorney - Appellate Division.

IT IS SO ORDERED.

DATED: Jun. 27 2007

HERBERT J. EXARHOS
JUDGE OF THE SUPERIOR COURT

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIFTH APPELLATE DISTRICT

COURT OF APPEAL
FIFTH APPELLATE DISTRICT
FILED

JUL 19 2007

LEISA V. BIGGERS, CLERK/ADMINISTRATOR
By____________
Deputy

In re PHILLIP W. DUNN, On Habeas Corpus.	F053206 (San Diego Sup. Ct. No. SCE221319)

BY THE COURT:*

The "Petition for Writ of Habeas Corpus," filed in this court on July 5, 2007, is denied .

Vartabedian, A. P. J.

* Vartabedian, A.P.J., Gomes, J., and Hill, J.

S155218

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re PHILLIP DUNN on Habeas Corpus

The petition for writ of habeas corpus is denied.

SUPREME COURT
FILED

JAN 1 6 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE
Chief Justice

JS44

(Rev. 07/89)

CIVIL COVER SHEET

FILED

MAR 1 4 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY KN DEPUTY

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

2254 ✓ 1983 | FILING FEE PAID Yes___ No ✓ | IFP MOTION FILED Yes___ No ✓ | COPIES SENT TO Court ✓ Pro Se

I (a) PLAINTIFFS

Phillip W. Dunn

DEFENDANTS

Ken Clark

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Kings
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Phillip W. Dunn
PO Box 5248
Corcoran, CA 93212
T-79951

ATTORNEYS (IF KNOWN)

'08 CV 0485 BTM JMA

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
☐ 110 Insurance
☐ Marine
☐ Miller Act
☐ Negotiable Instrument
☐ 150 Recovery of Overpayment &Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153Recovery of Overpayment of Veterans Benefits
☐ 160 Stockholders Suits
☐ Other Contract
☐ 195 Contract Product Liability

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectmant
☐ 240 Tort to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY
☐ 362 Personal Injury- Medical Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence Habeas Corpus
☒ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights

FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC881
☐ 630 Liquor Laws
☐ 640 RR & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR
☐ 710Fair Labor Standards Act
720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (13958)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
☐ 400 State Reappointment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 810 Selective Service
☐ 850 Securities/Commodities Exchange
☐ 875 Customer Challenge 12 USC
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State
☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $** Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE 3/14/2008 ~~SIGNATURE OF ATTORNEY OF RECORD~~ R.Mullen

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